

DOCUMENT RESUME

ED 125 176

EC 090 344

TITLE Education of Handicapped Children. Conference Report.
(To Accompany S.6).
INSTITUTION Congress of the U.S., Washington, D.C. Senate.
REPORT NO 94-455
PUB DATE Nov 75
NOTE 56p.; Not available in hard copy due to marginal
reproducibility of original document
AVAILABLE FROM Superintendent of Documents, U.S. Government Printing
Office, Washington, D.C. 20402
EDRS PRICE MF-\$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS *Due Process; *Educational Legislation; Elementary
Secondary Education; *Equal Education; Exceptional
Child Education; Federal Government; *Federal
Legislation; Government Role; *Handicapped
Children
IDENTIFIERS *Education for All Handicapped Children Act 1975

ABSTRACT

Presented is the conference report in which amendments to The Education for All Handicapped Children Act of 1975 (S.6) are detailed. Revised statements are set forth for such aspects of the law as entitlements and allocations, eligibility, state plans, procedural safeguards, administration, evaluation, and payments. Also cited are amendments regarding the employment of handicapped individuals, removal of architectural barriers, and establishment of media centers for the handicapped. The bulk of the document is composed of a joint explanatory statement of the committee of conference, in which the differences between the Senate bill and the House amendment and the agreed-upon substitute are provided. (CL)

* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *

ED125176

94TH CONGRESS
1st SessionU.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATIONTHIS DOCUMENT HAS BEEN REPRO-
DUCED EXACTLY AS RECEIVED FROM
THE PERSON OR ORGANIZATION ORIGIN-
ATING IT. POINTS OF VIEW OR OPINIONS
STATED DO NOT NECESSARILY REPRESENT
OFFICIAL NATIONAL INSTITUTE OF
EDUCATION POSITION OR POLICY.REPORT
No. 94-455

EDUCATION OF HANDICAPPED CHILDREN

NOVEMBER 14, 1975.—Ordered to be printed

Mr. RANDOLPH, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 6]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 6) to insure the right to an education for all handicapped children and to provide financial assistance to the States for such purpose, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Education for All Handicapped Children Act of 1975".

EXTENSION OF EXISTING LAW

SEC. 2. (a) (1) (A) Section 611(b)(2) of the Education of the Handicapped Act (20 U.S.C. 1411(b)(2)) (hereinafter in this Act referred to as the "Act"), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico."

(B) Section 611(c)(1) of the Act (20 U.S.C. 1411(c)(1)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "the Commonwealth of Puerto Rico."

(2) Section 611(c)(2) of the Act (20 U.S.C. 1411(c)(2)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "year ending June 30, 1975" and inserting in lieu thereof the following: "years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977", and by striking out "2 per centum" each place it appears therein and inserting in lieu thereof "1 per centum".

EC090347

(3) Section 611(d) of the Act (20 U.S.C. 1411(d)), as in effect during the fiscal years 1976 and 1977, is amended by striking out "year ending June 30, 1975" and inserting in lieu thereof the following: "years ending June 30, 1975, and 1976, and for the fiscal year ending September 30, 1977".

(4) Section 612(a) of the Act (20 U.S.C. 1412(a)), as in effect during the fiscal years 1976 and 1977, is amended—

(A) by striking out "year ending June 30, 1975" and inserting in lieu thereof "years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977"; and

(B) by striking out "fiscal year 1974" and inserting in lieu thereof "preceding fiscal year".

(b)(1) Section 614(a) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1975," and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

(2) Section 614(b) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1974" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

(3) Section 614(c) of the Education Amendments of 1974 (Public Law 93-380; 88 Stat. 580) is amended by striking out "fiscal year 1974" and inserting in lieu thereof the following: "the fiscal years ending June 30, 1975, and 1976, for the period beginning July 1, 1976, and ending September 30, 1976, and for the fiscal year ending September 30, 1977,".

(c) Section 612(a) of the Act, as in effect during the fiscal years 1976 and 1977, and as amended by subsection (a)(4), is amended by inserting immediately before the period at the end thereof the following: ", or \$300,000, whichever is greater".

(d) Section 612 of the Act (20 U.S.C. 1411), as in effect during the fiscal years 1976 and 1977, is amended by adding at the end thereof the following new subsection:

"(d) The Commissioner shall, no later than one hundred twenty days after the date of the enactment of the Education for All Handicapped Children Act of 1975, prescribe and publish in the Federal Register such rules as he considers necessary to carry out the provisions of this section and section 611."

(e) Notwithstanding the provisions of section 611 of the Act, as in effect during the fiscal years 1976 and 1977, there are authorized to be appropriated \$100,000,000 for the fiscal year 1976, such sums as may be necessary for the period beginning July 1, 1976, and ending September 30, 1976, and \$200,000,000 for the fiscal year 1977, to carry out the provisions of part B of the Act, as in effect during such fiscal years.

STATEMENT OF FINDINGS AND PURPOSE

Sec. 3. (a) Section 601 of the Act (20 U.S.C. 1401) is amended by inserting "(a)" immediately before "This title" and by adding at the end thereof the following new subsections:

"(b) The Congress finds that—

"(1) there are more than eight million handicapped children in the United States today;

"(2) the special educational needs of such children are not being fully met;

"(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

"(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

"(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

"(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

"(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

"(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

"(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

"(c) It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children."

(b) The heading for section 601 of the Act (20 U.S.C. 1401) is amended to read as follows:

**"SHORT TITLE; STATEMENT OF FINDINGS AND PURPOSE"
DEFINITIONS**

*Sec. 4. (a) Section 602 of the Act (20 U.S.C. 1402) is amended—
(1) in paragraph (1) thereof, by striking out "crippled" and in-*

serting in lieu thereof "orthopedically impaired", and by inserting immediately after "impaired children" the following: ", or children with specific learning disabilities.";

(2) in paragraph (5) thereof, by inserting immediately after "instructional materials," the following: "telecommunications, sensory, and other technological aids and devices,";

(3) in the last sentence of paragraph (15) thereof, by inserting immediately after "environmental" the following: ", cultural, or economic"; and

(4) by adding at the end thereof the following new paragraphs:

"(16) The term 'special education' means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

"(17) The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

"(18) The term 'free appropriate public education' means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 614(a)(5).

"(19) The term 'individualized education program' means a written statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

"(20) The term 'excess costs' means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting (A) amounts received under this part or under title I or title VII of the Elementary and Secondary Education Act of 1965, and (B) any State or local funds expended for programs

which would qualify for assistance under this part or under such titles.

"(21) The term 'native language' has the meaning given that term by section 703(a)(2) of the Bilingual Education Act (20 U.S.C. 880b-1(a)(2)).

"(22) The term 'intermediate educational unit' means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to handicapped children within that State."

(b) The heading for section 602 of the Act (20 U.S.C. 1402) is amended to read as follows:

"DEFINITIONS"

ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

Sec. 5. (a) Part B of the Act (20 U.S.C. 1411 et seq.) is amended to read as follows:

"PART B.—ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

"ENTITLEMENTS AND ALLOCATIONS

"Sec. 611. (a)(1) Except as provided in paragraph (3) and in section 619, the maximum amount of the grant to which a State is entitled under this part for any fiscal year shall be equal to—

"(A) the number of handicapped children aged three to twenty-one, inclusive, in such State who are receiving special education and related services;
multiplied by—

"(B)(i) 5 per centum, for the fiscal year ending September 30, 1978, of the average per pupil expenditure in public elementary and secondary schools in the United States;

"(ii) 10 per centum, for the fiscal year ending September 30, 1979, of the average per pupil expenditure in public elementary and secondary schools in the United States;

"(iii) 20 per centum, for the fiscal year ending September 30, 1980, of the average per pupil expenditure in public elementary and secondary schools in the United States;

"(iv) 30 per centum, for the fiscal year ending September 30, 1981, of the average per pupil expenditure in public elementary and secondary schools in the United States; and

"(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States;

except that no State shall receive an amount which is less than the amount which such State received under this part for the fiscal year ending September 30, 1977.

"(2) For the purpose of this subsection and subsection (b) through subsection (c), the term 'State' does not include Guam, American

Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(3) The number of handicapped children receiving special education and related services in any fiscal year shall be equal to the average of the number of such children receiving special education and related services on October 1 and February 1 of the fiscal year preceding the fiscal year for which the determination is made.

"(4) For purposes of paragraph (1)(B), the term 'average per pupil expenditure', in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

"(5)(A) In determining the allotment of each State under paragraph (1), the Commissioner may not count—

"(i) handicapped children in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 per centum of the number of all children aged five to seventeen, inclusive, in such State;

"(ii) as part of such percentage, children with specific learning disabilities to the extent the number of such children is greater than one-sixth of such percentage; and

"(iii) handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

"(B) For purposes of subparagraph (A), the number of children aged five to seventeen, inclusive, in any State shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

"(b)(1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1978—

"(A) 50 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

"(B) 50 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with the priorities established under section 612(3).

"(2) Of the funds which any State may use under paragraph (1)(A)—

"(A) an amount which is equal to the greater of—

"(i) 5 per centum of the total amount of funds received under this part by such State; or

"(ii) \$200,000;

may be used by such State for administrative costs related to carrying out sections 612 and 613; and

"(B) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3).

"(c)(1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter—

"(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

"(B) except as provided in paragraph (3), 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 612(3).

"(2)(A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (1)(A)—

"(i) an amount which is equal to the greater of—

"(I) 5 per centum of the total amount of funds received under this part by such State; or

"(II) \$200,000;

may be used by such State for administrative costs related to carrying out the provisions of sections 612 and 613; and

"(ii) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3).

"(B) The amount expended by any State from the funds available to such State under paragraph (1)(A) in any fiscal year for the provision of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

"(3) The provisions of section 613(a)(9) shall not apply with respect to amounts available for use by any State under paragraph (2).

"(4)(A) No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

"(i) such local educational agency or intermediate educational unit is entitled, under subsection (d), to less than \$7,740 for such fiscal year; or

"(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 614.

"(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to handicapped children residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2)(B) shall not apply to the use of such funds.

"(d) From the total amount of funds available to local educational agencies and intermediate educational units in any State under subsection (b)(1)(B) or subsection (c)(1)(B), as the case may be, each local educational agency or intermediate educational unit shall be entitled to an amount which bears the same ratio to the total amount

available under subsection (b) (1) (B) or subsection (c) (1) (B), as the case may be, as the number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in all local educational agencies and intermediate educational units which apply to the State educational agency involved for funds under this part.

"(e) (1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 601(c) in an amount equal to an amount determined by the Commissioner in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of the amounts available to all States under this part for that fiscal year. If the aggregate of the amounts, determined by the Commissioner pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

"(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount allotted to such jurisdiction for any fiscal year, or \$35,000, whichever is greater.

"(f) (1) The Commissioner is authorized to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts available to all States under this part for that fiscal year.

"(2) The Secretary of the Interior may receive an allotment under this subsection only after submitting to the Commissioner an application which meets the applicable requirements of section 614(a) and which is approved by the Commissioner. The provisions of section 616 shall apply to any such application.

"(g) (1) If the sums appropriated for any fiscal year for making payments to States under this part are not sufficient to pay in full the total amounts which all States are entitled to receive under this part for such fiscal year, the maximum amounts which all States are entitled to receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

"(2) In the case of any fiscal year in which the maximum amounts for which States are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made

available to pay in full the total of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency or intermediate educational unit shall report to the State educational agency on the amount of funds available to the local educational agency or intermediate educational unit, under the provisions of subsection (d), which it estimates that it will expend in accordance with the provisions of this part. The amounts so available to any local educational agency or intermediate educational unit, or any amount which would be available to any other local educational agency or intermediate educational unit if it were to submit a program meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies or intermediate educational units, in the manner provided by this section, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

“ELIGIBILITY

“Sec. 612. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Commissioner that the following conditions are met:

“(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

“(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1977, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

“(A) there is established (i) a goal of providing full educational opportunity to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

“(B) a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

“(C) all children residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed

special education and related services and which children are not currently receiving needed special education and related services;

"(D) policies and procedures are established in accordance with detailed criteria prescribed under section 617(c); and

"(E) the amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Commissioner.

"(3) The State has established priorities for providing a free appropriate public education to all handicapped children, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

"(4) Each local educational agency in the State will maintain records of the individualized education programs for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 614(a)(5).

"(5) The State has established (A) procedural safeguards as required by section 615, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

"(6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet education standards of the State educational agency.

"(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and

procedures required pursuant to the provisions of this section and section 613.

"STATE PLANS

"Sec. 613. (a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Commissioner, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

"(1) set forth policies and procedures designed to assure that funds paid to the State under this part will be expended in accordance with the provisions of this part, with particular attention given to the provisions of sections 611(b), 611(c), 611(d), 612(2), and 612(3);

"(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-2), section 305(b)(8) of such Act (20 U.S.C. 844a(b)(8)) or its successor authority, and section 122(a)(4)(B) of the Vocational Education Act of 1963 (20 U.S.C. 1262(a)(4)(B)), under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

"(3) set forth, consistent with the purposes of this Act, a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained, and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and (B) adopting, where appropriate, promising educational practices and materials development through such projects;

"(4) set forth policies and procedures to assure—

"(A) that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and

"(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this part) at no cost to their parents

or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

"(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this part for services to any child who is determined to be erroneously classified as eligible to be counted under section 611(a) or section 611(d);

"(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

"(7) provide for (A) making such reports in such form and containing such information as the Commissioner may require to carry out his functions under this part, and (B) keeping such records and affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

"(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

"(9) provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

"(10) provide, consistent with procedures prescribed pursuant to section 617(a)(2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

"(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized

education programs), in accordance with such criteria that the Commissioner shall prescribe pursuant to section 617; and

"(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials, and administrators of programs for handicapped children, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part, and (C) assists the State in developing and reporting such data and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

"(b) Whenever a State educational agency provides free appropriate public education for handicapped children, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) as are contained in section 614(a), except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 614(a).

"(c) The Commissioner shall approve any State plan and any modification thereof which—

"(1) is submitted by a State eligible in accordance with section 612; and

"(2) meets the requirements of subsection (a) and subsection (b).

The Commissioner shall disapprove any State plan which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

"APPLICATION

"Sec. 614. (a) A local educational agency or an intermediate educational unit which desires to receive payments under section 611(d) for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

"(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—

"(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

"(B) establish policies and procedures in accordance with detailed criteria prescribed under section 617(c);

"(C) establish a goal of providing full educational opportunities to all handicapped children, including—

"(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 613(a)(3);

"(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all handicapped children, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education;

"(iii) the participation and consultation of the parents or guardian of such children; and

"(iv) to the maximum extent practicable and consistent with the provisions of section 612(5)(B), the provision of special services to enable such children to participate in regular educational programs;

"(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

"(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

"(2) provide satisfactory assurance that (A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property, (B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part (i) shall be used to pay only the excess costs directly attributable to the education of handicapped children, and (ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds, and (C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this part;

"(3)(A) provide for furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in programs carried out under this part; and

"(B) provide for keeping such records, and provide for affording such access to such records, as the State educational agency

may find necessary to assure the correctness and verification of such information furnished under subclause (A);

"(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluations and reports required under clause (3) shall be public information;

"(5) provide assurances that the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program of each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually;

"(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a); and

"(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 612(5) (B), 612(5) (C) and 615.

"(b) (1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application meets the requirements of subsection (a), except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) is approved by the Commissioner under section 613(c). A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application does not meet the requirements of subsection (a).

"(2) (A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

"(i) make no further payments to such local educational agency or such intermediate educational unit under section 620 until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

"(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a).

"(B) The provisions of the last sentence of section 616(a) shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

"(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 615 which is adverse to the local educational agency or intermediate educational unit involved in such decision.

"(c)(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to receive payments because of the application of section 611(c)(4)(A)(i) or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

"(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agency may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 611(d) if an individual application of any such local educational agency had been approved.

"(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a) and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

"(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this part, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

"(d) Whenever a State educational agency determines that a local educational agency—

"(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a);

"(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

"(3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special education and related services directly to handicapped children residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such educa-

tion and services are provided shall be consistent with the requirements of this part.

"(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 611(d), to such other local educational agencies within the State as are not adequately providing special education and related services to all handicapped children residing in the areas served by such other local educational agencies.

"(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

"PROCEDURAL SAFEGUARDS

"Sec. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

"(b)(1) The procedures required by this section shall include, but shall not be limited to—

"(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

"(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

"(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

"(i) proposes to initiate or change, or

"(ii) refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

"(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

"(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

"(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

"(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

"(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

"(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

"(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the

parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

"(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

WITHHOLDING AND JUDICIAL REVIEW

"Sec. 616. (a) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

"(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

"(2) that in the administration of the State plan there is a failure to comply with any provision of this part or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan,

the Commissioner (A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and (B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 613(a)(2) within his jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children. If the Commissioner withholds further payments under clause (A) or clause (B) he may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Commissioner is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in clause (1) or clause (2), no further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) within his jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children, or payments by the State educational agency under this part shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

"(b)(1) If any State is dissatisfied with the Commissioner's final action with respect to its State plan submitted under section 613, such State may, within sixty days after notice of such action, file with the

United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner hereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

"(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

ADMINISTRATION

"Sec. 617. (a)(1) In carrying out his duties under this part, the Commissioner shall—

"(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this part;

"(B) provide such short-term training programs and institutes as are necessary;

"(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

"(D) assure that each State shall, within one year after the date of the enactment of the Education for All Handicapped Children Act of 1975, provide certification of the actual number of handicapped children receiving special education and related services in such State.

"(2) As soon as practicable after the date of the enactment of the Education for All Handicapped Children Act of 1975, the Commissioner shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting State plans under this part in order to assure equity among the States.

"(b) In carrying out the provisions of this part, the Commissioner (and the Secretary, in carrying out the provisions of subsection (c)) shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

"(c) The Secretary shall take appropriate action, in accordance with the provisions of section 438 of the General Education Provisions Act, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Commissioner and by State and local educational agencies pursuant to the provisions of this part.

"(d) The Commissioner is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 618 and to carry out his duties under subsection (a)(1) of this subsection without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

"EVALUATION

"Sec. 618. (a) The Commissioner shall measure and evaluate the impact of the program authorized under this part and the effectiveness of State efforts to assure the free appropriate public education of all handicapped children.

"(b) The Commissioner shall conduct, directly or by grant or contract, such studies, investigations, and evaluations as are necessary to assure effective implementation of this part. In carrying out his responsibilities under this section, the Commissioner shall—

"(1) through the National Center for Education Statistics, provide to the appropriate committees of each House of the Congress and to the general public at least annually, and shall update at least annually, programmatic information concerning programs and projects assisted under this part and other Federal programs supporting the education of handicapped children, and such information from State and local educational agencies and other appropriate sources necessary for the implementation of this part including—

"(A) the number of handicapped children in each State, within each disability, who require special education and related services;

"(B) the number of handicapped children in each State, within each disability, receiving a free appropriate public education and the number of handicapped children who need and are not receiving a free appropriate public education in each such State;

"(C) the number of handicapped children in each State, within each disability, who are participating in regular educational programs, consistent with the requirements of section 612(5)(B) and section 614(a)(1)(C)(iv), and the number of handicapped children who have been placed in separate classes or separate school facilities, or who have been otherwise removed from the regular education environment;

"(D) the number of handicapped children who are enrolled in public or private institutions in each State and who are receiving a free appropriate public education, and the number of handicapped children who are in such institutions and who are not receiving a free appropriate public education;

"(E) the amount of Federal, State, and local expenditures in each State specifically available for special education and related services; and

"(F) the number of personnel, by disability category, employed in the education of handicapped children, and the

estimated number of additional personnel needed to adequately carry out the policy established by this Act; and

"(2) provide for the evaluation of programs and projects assisted under this part through—

"(A) the development of effective methods and procedures for evaluation;

"(B) the testing and validation of such evaluation methods and procedures; and

"(C) conducting actual evaluation studies designed to test the effectiveness of such programs and projects.

"(c) In developing and furnishing information under subclause (E) of clause (1) of subsection (b), the Commissioner may base such information upon a sampling of data available from State agencies, including the State educational agencies, and local educational agencies.

"(d) (1) Not later than one hundred twenty days after the close of each fiscal year, the Commissioner shall transmit to the appropriate committees of each House of the Congress a report on the progress being made toward the provision of free appropriate public education to all handicapped children, including a detailed description of all evaluation activities conducted under subsection (b).

"(2) The Commissioner shall include in each such report—

"(A) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to assure that handicapped children receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children in day or residential facilities;

"(B) any recommendations for change in the provisions of this part, or any other Federal law providing support for the education of handicapped children; and

"(C) an evaluation of the effectiveness of the procedures undertaken by each such agency or unit to prevent erroneous classification of children as eligible to be counted under section 611, including actions undertaken by the Commissioner to carry out provisions of this Act relating to such erroneous classification.

In order to carry out such analyses and evaluations, the Commissioner shall conduct a statistically valid survey for assessing the effectiveness of individualized education programs.

"(e) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

"INCENTIVE GRANTS

"Sec. 619. (a) The Commissioner shall make a grant to any State which—

"(1) has met the eligibility requirements of section 612;

"(2) has a State plan approved under section 613; and

"(3) provides special education and related services to handicapped children aged three to five, inclusive, who are counted for the purposes of section 611(a)(1)(A).

The maximum amount of the grant for each fiscal year which a State

may receive under this section shall be \$300 for each such child in that State.

"(b) Each State which—

"(1) has met the eligibility requirements of section 612,

"(2) has a State plan approved under section 613, and

"(3) desires to receive a grant under this section,

shall make an application to the Commissioner at such time, in such manner, and containing or accompanied by such information, as the Commissioner may reasonably require.

"(c) The Commissioner shall pay to each State having an application approved under subsection (b) of this section the amount to which the State is entitled under this section, which amount shall be used for the purpose of providing the services specified in clause (3) of subsection (a) of this section.

"(d) If the sums appropriated for any fiscal year for making payments to States under this section are not sufficient to pay in full the maximum amounts which all States may receive under this part for such fiscal year, the maximum amounts which all States may receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

"(e) In addition to the sums necessary to pay the entitlements under section 611, there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

"PAYMENTS

"Sec. 620. (a) The Commissioner shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this part. Any State educational agency receiving payments under this subsection shall distribute payments to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this part after the State educational agency has approved applications of such agencies or units for payments in accordance with section 614(b).

"(b) Payments under this part may be made in advance or by way of reimbursement and in such installments as the Commissioner may determine necessary."

(b)(1) The Commissioner of Education shall, no later than one year after the effective date of this subsection, prescribe—

(A) regulations which establish specific criteria for determining whether a particular disorder or condition may be considered a specific learning disability for purposes of designating children with specific learning disabilities;

(B) regulations which establish and describe diagnostic procedures which shall be used in determining whether a particular child has a disorder or condition which places such child in the category of children with specific learning disabilities; and

(C) regulations which establish monitoring procedures which will be used to determine if State educational agencies, local educational agencies, and intermediate educational units are complying with the criteria established under clause (A) and clause (B).

(2) *The Commissioner shall submit any proposed regulation written under paragraph (1) to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Public Welfare of the Senate, for review and comment by each such committee, at least fifteen days before such regulation is published in the Federal Register.*

(3) *If the Commission determines, as a result of the promulgation of regulations under paragraph (1), that changes are necessary in the definition of the term "children with specific learning disabilities", as such term is defined by section 602(15) of the Act, he shall submit recommendations for legislation with respect to such changes to each House of the Congress.*

(4) *For purposes of this subsection:*

(A) *The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.*

(B) *The term "Commissioner" means the Commissioner of Education.*

(c) *Effective on the date upon which final regulations prescribed by the Commissioner of Education under subsection (b) take effect, the amendment made by subsection (a) is amended, in subparagraph (A) of section 611(a)(5) (as such subparagraph would take effect on the effective date of subsection (a)), by adding "and" at the end of clause (i), by striking out clause (ii), and by redesignating clause (iii) as clause (ii).*

AMENDMENTS WITH RESPECT TO EMPLOYMENT OF HANDICAPPED INDIVIDUALS, REMOVAL OF ARCHITECTURAL BARRIERS, AND MEDIA CENTERS

Sec. 6. (a) Part A of the Act is amended by inserting after section 605 thereof the following new sections:

"EMPLOYMENT OF HANDICAPPED INDIVIDUALS

"Sec. 606. The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act.

"GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

"Sec. 607. (a) Upon application by any State or local educational agency or intermediate educational unit the Commissioner is authorized to make grants to pay part or all of the cost of altering existing buildings and equipment in the same manner and to the same extent as authorized by the Act approved August 12, 1968 (Public Law 90-480), relating to architectural barriers.

"(b) For the purpose of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary."

(b) Section 653 of the Act (20 U.S.C. 1453) is amended to read as follows:

CENTERS ON EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED

"SEC. 653. (a) The Secretary is authorized to enter into agreements with institutions of higher education, State and local educational agencies, or other appropriate nonprofit agencies, for the establishment and operation of centers on educational media and materials for the handicapped, which together will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing, developing, and adapting instructional materials, and such other activities consistent with the purposes of this part as the Secretary may prescribe in such agreements. Any such agreement shall—

"(1) provide that Federal funds paid to a center will be used solely for such purposes as are set forth in the agreement; and

"(2) authorize the center involved, subject to prior approval by the Secretary, to contract with public and private agencies and organizations for demonstration projects.

"(b) In considering proposals to enter into agreements under this section, the Secretary shall give preference to institutions and agencies—

"(1) which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped; and

"(2) which can serve the educational technology needs of the Model High School for the Deaf (established under Public Law 89-694).

"(c) The Secretary shall make an annual report on activities carried out under this section which shall be transmitted to the Congress."

CONGRESSIONAL DISAPPROVAL OF REGULATIONS

SEC. 7. (a)(1) Section 431(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)) is amended by inserting "final" immediately before "standard" each place it appears therein.

(2) The third sentence of section 431(d)(2) of such Act (20 U.S.C. 1232(d)(2)) is amended by striking out "proposed" and inserting in lieu thereof "final".

(3) The fourth and last sentences of section 431(d)(2) of such Act (20 U.S.C. 1232(d)(2)) each are amended by inserting "final" immediately before "standard".

(b) Section 431(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)) is amended by adding at the end thereof the following new sentence: "Failure of the Congress to adopt such a concurrent resolution with respect to any such final standard, rule, regulation, or requirement prescribed under any such Act, shall not represent, with respect to such final standard, rule, regulation, or requirement, an approval or finding of consistency with the Act from which it derives its authority for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an ap-

proval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding."

EFFECTIVE DATES

SEC. 8. (a) Notwithstanding any other provision of law, the amendments made by sections 2(a), 2(b), and 2(c) shall take effect on July 1, 1975.

(b) The amendments made by sections 2(d), 2(e), 3, 6, and 7 shall take effect on the date of the enactment of this Act.

(c) The amendments made by sections 4 and 5(a) shall take effect on October 1, 1977, except that the provisions of clauses (A), (C), (D), and (E) of paragraph (2) of section 612 of the Act as amended by this Act, section 617(a)(1)(D) of the Act, as amended by this Act, section 617(b) of the Act, as amended by this Act, and section 618(a) of the Act, as amended by this Act, shall take effect on the date of the enactment of this Act.

(d) The provisions of section 5(b) shall take effect on the date of the enactment of this Act.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

JENNINGS RANDOLPH,
ALAN CRANSTON,
HARRISON WILLIAMS,
CLAIBORNE PELL,
EDWARD M. KENNEDY,
WALTER F. MONDALE,
WILLIAM D. HATHAWAY,
ROBERT T. STAFFORD,
ROBERT TAFT, JR.,
DICK SCHWEIKER,
J. GLENN BEALL, JR.,
J. JAVITS,

Managers on the Part of the Senate.

CARL D. PERKINS,
JOHN BRADEMAS,
PATSY T. MINK,
LLOYD MEEDS,
SHIRLEY CHISHOLM,
WILLIAM LEHMAN,
ROBERT J. CORNELL,
EDWARD P. BEARD,
LEO C. ZEFERETTI,
GEORGE MILLER,
TIM L. HALL,
ALBERT H. QUIE,
ALPHONZO BELL,
PETER A. PEYSER,
JAMES M. JEFFORDS,
LARRY PRESSLER,

Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 6) to insure the right to an education for all handicapped children and to provide financial assistance to the States for such purpose, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Short title

The Senate bill provides that the Act may be cited as the "Education for All Handicapped Children Act"; the House amendments provide that the Act may be cited as the "Education for All Handicapped Children Act of 1975". The Senate recedes.

Extension of certain provisions

The House provision classifies Puerto Rico as a State for purposes of the Education of the Handicapped Act as of the close of June 30, 1975; the Senate provisions would classify Puerto Rico as a State for such purpose as of the close of September 30, 1976. Existing law would allow Puerto Rico to be classified as a State as of July 1, 1975. The Senate recedes.

The House provisions result in a maximum entitlement of 2 percent of aggregate State entitlement for the territories (including Guam, American Samoa, the Virgin Islands, and the Trust Territories of the Pacific Islands, but not Puerto Rico) and 1 percent of such aggregate entitlements for the Secretary of the Interior (for the benefit of handicapped Indian children) for fiscal years 1976 and 1977, and 1 percent of aggregate appropriations for both the territories and the Secretary thereafter. The Senate provisions provide for a maximum entitlement of 2 percent of aggregate State entitlements for the territories (including Puerto Rico), and 1 percent for the Secretary, for fiscal year 1976; and 1 percent for the territories, and 1 percent for the Secretary for fiscal years 1977 through 1979.

The House recedes with two amendments, deleting Puerto Rico from the jurisdictions considered as territories and reducing the maxi-

num percentage for the territories from 2 per centum to 1 per centum of aggregate appropriations in order to assure the territories the same allotment as in existing law.

The Senate bill extends provisions of the Education of the Handicapped Act, as in effect during fiscal year 1975, for one fiscal year; the House amendments extend such provisions for two fiscal years.

The conference substitute conforms to the House amendments, but also adopts a limitation on appropriations for the fiscal year ending June 30, 1976, for the period beginning July 1, 1976 and ending September 30, 1976, and for the fiscal year ending September 30, 1977, providing that no more than \$100 million may be appropriated for the fiscal year ending June 30, 1976, providing an authorization of such sums as may be necessary for the transition period, and providing that no more than \$200 million may be appropriated for the fiscal year ending September 30, 1977. The conferees intend that appropriations for fiscal year 1977 shall not be reduced as a result of the transition to the new fiscal year, and have therefore authorized such sums as may be necessary for the period beginning July 1, 1976 and ending September 30, 1976.

The Senate bill provides that for the period previous to the effective date of the new formula (i.e., fiscal year 1976), no State shall receive less than it received in fiscal year 1975. The House amendments provide for that period (i.e., fiscal years 1976 and 1977), no State shall receive less than it received in the preceding fiscal year, or \$300,000, whichever is the greater.

The conference substitute conforms to the House amendments.

Rules relating to grant and allocation provisions

The House amendments require the Commissioner to prescribe regulations, no later than 120 days after the applicable effective date (i.e., July 1, 1975), to carry out the provisions of section 611 of the Act (relating to grants to States for education of handicapped children) and section 612 of the Act (relating to allocations of appropriations). There is no comparable Senate provision.

The Senate recedes with an amendment requiring regulations 120 days after the date of enactment of this Act. The conferees clarify that such regulations cover provisions of existing law extended for fiscal years 1976 and 1977.

Findings and purpose

The Senate bill and the House amendments add a new statement of purpose section in section 601 of the Education of the Handicapped Act.

The House amendments, but not the Senate bill, designate this section as a Statement of *Findings and Purpose*. The Senate recedes.

The Senate bill finds that the special educational needs of such children are being fully met *in only a few school* systems; the House amendments find that the special education needs of such children are *not* being fully met. The Senate recedes.

The Senate bill and the House amendments find that it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children. The Senate bill, not the House amendments, states

that it is in the national interest that the Federal Government assist State and local efforts *in order to assure equal protection of the law*. The House recedes.

The Senate bill states that it is the purpose of the title to *insure* that all handicapped children have available to them *within the time period specified in section 614 of the Act a free appropriate public education*. The House amendments state that it is the purpose of the title to assure that all handicapped children have available to them *special education and related services designed to meet their unique needs*.

The conference substitute provides that it is the purpose of the title to assure that all handicapped children have available to them within the time period specified in section 612(2)(B) of the Act a free appropriate public education which emphasizes special education and related services designed to meet their unique needs.

The Senate bill states that the purpose is to *insure* that the rights of handicapped children are protected; the House amendments state that the purpose is to *assure* that the rights of handicapped children are protected. The Senate recedes.

The Senate bill states that the purpose is to *relieve the fiscal burden placed upon States and localities when they provide for the education of all handicapped children*; the House amendments state that the purpose is to *assist States and localities to provide for the education of all handicapped children*. The Senate recedes.

Definitions

The Senate bill restates all the definitions contained in the Education of the Handicapped Act; the House amendments make specific amendments to such definitions. The substantive differences are described below. The conference substitute conforms to the House bill.

The House amendments, but not the Senate bill, amend the definition in existing law of *local educational agency*, to include "public educational agency". The House recedes.

Both the Senate bill and the House amendments amend the definition in existing law to clarify that disabilities that are primarily the result of cultural or economic disadvantage are not included within the definition. In addition, the Senate bill, but not the House amendments—deletes the phrase "which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations"; deletes the term "dyslexia"; and changes the term "disadvantage" to "handicaps".

The Senate recedes.

The Senate bill, but not the House amendments, amends the definition in existing law of *equipment*, to include "telecommunications, sensory, and other technological aids and devices".

The House recedes.

The Senate bill and the House amendments add a new definition to the Education of the Handicapped Act of "*special education*". The definitions are identical, except that the Senate bill requires such education to be provided at no cost to parents or guardians, the House provision additionally specifies that the instruction is to meet the unique needs of the handicapped child *as set forth in the individualized education program of such child*, and specifically includes class-

room instruction, home instruction, and instruction in hospitals and institutions.

The conference substitute combines the provisions of the Senate bill and the House amendments and deletes the phrase "as set forth in the individualized education program of such child" since this phrase also appears in the definition of "free appropriate public education" and is therefore unnecessary. The Conferees point out that while instruction may take place in such locations as classrooms, the child's home, or hospitals and institutions, the delivery of such instruction must take place in a manner consistent with the requirements of law which provide that to the maximum extent appropriate handicapped children must be educated with children who are not handicapped, and that handicapped children should be placed in special classes, separate schooling, or any other educational environment only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and supportive services cannot be achieved satisfactorily.

The Senate bill and the House amendments add a new definition of "related services." The definitions are comparable; however, the House amendments additionally include medical services for diagnostic and evaluation purposes. The Senate bill also includes the early identification and assessment of handicapping conditions in children and the provision of services to such children. The conference substitute adopts both of these additions, but deletes the phrase "and provision of services to such children" relating to early identification and assessment since the services intended are already in the definition.

The Senate bill and the House amendments add to the definitions in the Education of the Handicapped Act a definition of individualized instructional planning for each handicapped child which includes a statement of the child's present level of educational performance, statement of the instructional objectives to be achieved, statement of the specific educational services to be provided to the child, the extent to which the child will participate in the regular educational program, and the projected date for initiation and anticipated duration of such services.

The Senate bill designates this individualized instructional planning as an "individualized planning conference"; the House amendments designate the planning as an "individualized education program". The Senate recedes.

The Senate bill provides that the individualized planning conference is a meeting or meetings for the purpose of developing a written statement; the House amendments provide that the individualized education program is an educational plan. The House recedes.

The Senate bill provides that the written statement shall be developed by a representative of the local educational agency, the teacher, the parents or guardian to the handicapped child and the child when appropriate; the House amendments provide that the educational plan shall be developed jointly by the local educational agency and an appropriate teacher *in consultation with* the parents or guardian of the child, and the child, whenever appropriate. The House recedes.

The Senate bill, but not the House amendments, provides that the representatives of the local educational agency shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of the child. The House recedes.

The Senate bill provides for a statement of *short-term* instructional objectives; the House amendments provide for a statement of *desired* objectives.

The conference substitute provides that the individualized educational program shall include a statement of the annual goals and short-term objectives to be achieved by the child. It is intended that each individual handicapped child will have an educational program which states the annual goals as well as including short-term instructional objectives to be achieved within shorter time periods.

The House amendments, but not the Senate bill, provide that the individualized instructional planning shall include objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being met.

The Senate recedes with an amendment specifying that such objective criteria and evaluation procedures shall be "appropriate". The conferees intend that this amendment clarify that any criteria and evaluation procedures used are to be consistent with the requirements regarding testing and evaluation procedures in existing law.

The conferees further clarify that it is not intended that the individualized educational programs be forwarded to the U.S. Office of Education or the State educational agency. The individualized educational programs are intended to be retained in the local educational agency. Where inspection or review of such programs may be useful to the Office of Education or State educational agency for purposes of audit or evaluation, it is intended that such activities take place within the local agency, subject to strict procedures for the protection of confidentiality.

The House amendments, but not the Senate bill, add to the Education of the Handicapped Act, a definition of "*public educational agency*" defining such agency as any State educational agency or any other public agency approved by a State educational agency to provide special education and related services to handicapped children within the State involved. The conference substitute includes a definition of intermediate educational unit, defining such term as any public authority established by State law for the purpose of providing free public education on a regional level within the State which provides special education and related services to handicapped children within that State and which is not a local educational authority but which is under the general supervision of the State educational agency. The conferees include this definition in order to cover certain unique situations in States where public bodies established by State law provide special education and related services for handicapped children, but where the definition of local educational agency does not necessarily apply, e.g., intermediate units in the Commonwealth of Pennsylvania. Generally, the term "intermediate educational unit" is used throughout the conference report wherever the term "local educational agency" is also used.

The House amendments, but not the Senate bill, add to the Education of the Handicapped Act, a definition of "excess costs", defining such costs as those costs which are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting amounts received under this part, under title I or title VII of the Elementary and Secondary Education Act of 1965, and any State, local, or private funds expended for programs which would qualify for assistance under this part or under such titles.

The Senate recedes deleting the reference to private funds.

Formula

Both the Senate bill, and the House amendments, established a new entitlement formula replacing the formula in effect under the Education of the Handicapped Act.

The Senate bill required the new formula to take effect beginning October 1, 1976, and to remain in effect through fiscal year 1979. It set maximum amounts of entitlements to the States, and required that the Commissioner make payments to the States based on such entitlements for the purpose of providing full educational opportunity to all handicapped children. Under the Senate formula each State was entitled to receive an amount equal to the number of handicapped children, aged three to twenty-one, inclusive, receiving special education and related services (based on data from the most recent fiscal year for which satisfactory data are available to the Commissioner), multiplied by \$300.

Under the Senate bill, sums appropriated for each fiscal year were to be made available to States and allocated first in an amount equal to the amount each State had received under the Education of the Handicapped Act in the preceding fiscal year. Funds remaining after such allotments were to be allocated to States based on unsatisfied entitlements created under the new formula, ratably reduced if appropriations were insufficient to fully fund such entitlements.

The Senate bill further required each State to distribute 40% of the funds received by the State to local educational agencies in direct proportion to the number of handicapped children in need of a free appropriate public education in the area served by the local education agency. In order to receive any funds, the local educational agency had to be eligible to receive an allotment of at least \$7,500. The remainder of the funds, including those not distributed to local educational agencies because of the \$7,500 limitation, were required to be distributed by the State educational agency in a manner consistent with meeting the timetables and the priorities of providing a free appropriate public education first, to handicapped children not receiving an education, and second, to handicapped children with the most severe handicaps receiving an inadequate education.

Finally, the Senate bill placed a limitation on the number of handicapped children each State could count for purposes of entitlement, providing that no State could count as handicapped children a number greater than 10 percent of all children aged three to twenty-one, inclusive, in the State. The Senate bill also provided that payments under the Act could be used for the early identification and assessment of children under three years of age.

The House amendments required the new formula to go into effect at the close of September 30, 1977, and to remain in effect permanently thereafter. Under this new entitlement formula, the Commissioner was required to make payments to each State in amounts which the State and local educational agencies were eligible to receive. Under the House formula, the Commissioner was to allot to each local educational agency an amount equal to the product of the number of handicapped children enrolled in programs of free appropriate public education and 50 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

Each State receiving payments was required to distribute payments to local educational agencies in amounts they were eligible to receive, subject to the submission by the local educational agency of an approved application. If, among other requirements, the State educational agency determined the local educational agency was unable to maintain a program of sufficient size and scope, it could disapprove the application and serve the handicapped children within the jurisdiction of the local educational agency directly.

The House amendments entitled each State to a level of funding for any fiscal year which was at least equal to the State's funding for fiscal year 1977, or \$300,000, whichever is greater. Finally, the House amendments provided a limitation on the number of handicapped children counted, such that the Commissioner could not count as handicapped children a number greater than 12 percent of all children aged five to seventeen in the State, and could not count children with specific learning disabilities to the extent that the number counted was greater than 1/6th of the overall percentage of children counted.

The conference substitute provides that the new entitlement formula shall take effect at the close of September 30, 1977, and shall remain in effect permanently thereafter.

The maximum amount of the grant which a State is entitled to receive in any fiscal year is equal to the number of handicapped children aged three to twenty-one, inclusive, in such State who are receiving special education and related services multiplied by a specified percentage of the average per pupil expenditure in public elementary and secondary schools in the United States and such percentage is: 5 percent for fiscal year 1978; 10 percent for fiscal year 1979; 20 percent for fiscal year 1980; 30 percent for fiscal year 1981; and 40 percent for fiscal year 1982 and for each fiscal year thereafter. No State may receive an amount in any fiscal year which is less than the amount such State received for the fiscal year ending September 30, 1977.

The number of handicapped children receiving special education and related services in any fiscal year shall be the average of such children receiving special education and related services on October 1 and February 1 of the preceding fiscal year, and the term average per pupil expenditure shall be defined in the same manner as it is defined in section 403(16) of the Act of September 30, 1950 (Public Law 874, 81st Congress).

The Commissioner may not count handicapped children for purposes of determining the allotment of each State to the extent that the number of such children is greater than 12 percent of the number of all children aged five to seventeen, inclusive, within the State (determined by the Commissioner on the basis of the most recent satis-

factory data available to him). Further, the Commissioner may not count, as part of such percentage, children with specific learning disabilities to the extent the number of children is greater than one-sixth of such percentage or children counted pursuant to section 121 of the Elementary and Secondary Education Act of 1965.

Beginning in fiscal year 1979 and for each fiscal year thereafter 25 percent of the funds received by a State may be used by such State in a manner consistent with the priorities and 75 percent of such funds shall be distributed to local educational agencies and intermediate educational units. The distribution of funds to local educational agencies and intermediate educational units shall be based on each such agency's or unit's ratio among all such agencies or units in the State of handicapped children aged three to twenty-one, inclusive, receiving special education and related services in the school district of such agency or such unit.

The conference agreement further provides that no funds shall be distributed to any local educational agency or intermediate educational unit in any fiscal year if the local educational agency or intermediate educational unit would not be serving enough handicapped children so as to be eligible to receive \$7,500 pursuant to the provision for distribution of funds to such agencies or units, or, if such agency or unit has not submitted an application which meets the requirements of section 614 relating to local applications. Funds which are not distributed to local educational agencies and intermediate educational units pursuant to these limitations shall be used by the State educational agency to assure the provision of free appropriate public education to handicapped children residing in the area served by such local educational agencies or intermediate educational units and the provisions with respect to matching State funds (discussed below) shall not apply.

Of the amounts received by a State in any fiscal year, no State educational agency may spend more than 5 percent or \$200,000, whichever is greater, for administration of the provisions relating to eligibility and State plans. Beginning in fiscal year 1979 and for each fiscal year thereafter, with the exception of funds for administration and funds not distributed to local educational agencies or intermediate educational units pursuant to the limitations discussed above, no State may spend from Federal funds available to the State under this part an amount greater than an amount spent by such State from State funds for the education of handicapped children. The conferees do not wish this requirement implemented so as to require accounting on a project-by-project basis. The matching requirement is applicable only to major program areas such as a system of comprehensive personnel development and the development and provision of services for children in sparsely populated areas within the State. At the same time it is not intended that any individual project be exclusively federally funded.

Finally, the conference agreement provides for ratable reduction if sums appropriated are insufficient to satisfy fully the entitlements created, and provides that payments under the Act may be used for the early identification and assessment of handicapping conditions in children under three years of age.

Local reporting dates and reallocation

The House amendments provide that in any fiscal year in which funds have not been available to pay in full the total of the maximum

amounts to which local education agencies are eligible the State shall fix dates before which each local educational agency shall report to it on the amount of funds available which it estimates it will expend. The State educational agency may reallocate such funds, or any amount available to any other local educational agency if it were to submit an approvable plan, which the State determines will not be used during the time it is available. Such amounts shall be allotted to local educational agencies the State determines will need additional funds to carry out approved programs, and such amounts shall be reallocated in the same manner utilized to reduce allotments, but in no case shall a local educational agency be allotted more than the maximum amount it is eligible to receive. There is no comparable Senate provision. The Senate recedes.

Allotment to the Secretary of the Interior

The House amendments provide that the Secretary of the Interior may only receive an allotment after he submits a plan which meets the requirements of the Act relating to State plans, and provide that provisions relating to approval, opportunity for a hearing, and appeals also relate to the plan he would submit. The comparable Senate provision provides that payments may be made to the Secretary based on terms determined by the Commissioner pursuant to criteria he establishes which will best carry out the purposes of the Act.

The conference substitute provides that the Secretary may receive an allotment only after submitting an application which meets the applicable requirements of section 614(a), which is approved by the Commissioner. The requirements of section 616, relating to withholding and judicial review, shall also apply to such application. The conferees intend that all application requirements which apply to local educational agencies relating to the provision of a free appropriate public education to all handicapped children within those jurisdictions in accordance with the priorities established under this part shall be applied to the Secretary of Interior, and that all benefits and protections provided for handicapped children served by local educational agencies shall also be provided by the Secretary of Interior to handicapped children served by the Department of Interior.

The Senate bill provides that such allotments may be made for each fiscal year for which the formula is in effect. The House recedes.

Territorial provisions

The Senate bill provides that Guam, American Samoa, the Virgin Islands and the Trust Territories of the Pacific Islands, shall be entitled to a grant in an amount determined by the Commissioner in accordance with criteria established by him in regulations. The House amendments and existing law provide that the Commissioner shall allot the amount available among such jurisdictions according to their respective needs. The Senate recedes.

Specific learning disabilities regulations

The House amendments direct the Commissioner of Education to prescribe regulations no later than one year from the date of enactment which establish specific criteria for determining whether a learning disorder or condition may be considered a specific learning disability; and establish and describe diagnostic procedures which

shall be used in determining whether a child has a learning disorder or condition which designates him as learning disabled.

Any proposed regulations shall be transmitted to the Committee on Education and Labor and Labor and Public Welfare at least 15 days prior to publication in the Federal Register in accordance with section 431 of the General Education Provisions Act, for review and comment.

Upon the date which the final regulations take effect, the language relating to the counting limitation for specific learning disabilities is struck from the law. There are no comparable Senate provisions.

The Senate recedes with three amendments, directing the Commissioner of Education to recommend any change in the legislative definition of 'specific learning disabilities' which he believes is necessary to carry out the purposes of the Act, directing the Commissioner to include in such regulations the specific monitoring procedures he will use to determine whether State and local educational agencies are adequately implementing the criteria and diagnostic procedures, and striking the language relating to section 431 of the General Education Provisions Act as unnecessary because the General Education Provisions Act covers the Education of the Handicapped Act.

Eligibility requirements and State plan requirements

The Senate bill replaces State plan provisions contained in the Education of the Handicapped Act with eligibility conditions and an annual application to be submitted by any State which desires to participate and has met the eligibility conditions. The House amendments make amendments to existing State plan provisions.

The conference substitute conforms to the Senate bill except that the annual application is redesignated as the State Plan.

Policy. The Senate bill requires that a State demonstrate to the Commissioner that the State has in effect a policy that assures that all handicapped children have the right to a free appropriate public education. There is no comparable House provision relating to the State.

The House recedes.

Timetable. The Senate bill requires that the State, in order to be eligible for assistance, submit a plan as required by the Education Amendments of 1974, and that such plan be amended setting forth in detail the policies and procedures the State will undertake or has undertaken to assure that a free appropriate public education will be available to all handicapped children between the ages of 3 and 18 within the State not later than September 1, 1978, and that a free appropriate public education will be available to all handicapped children between the ages of 3 and 21 within the State not later than September 1, 1980. The Senate bill further provides that with respect to handicapped children aged three to five and eighteen to twenty-one, inclusive, that the requirement of providing a free appropriate education in accordance with this timetable, shall not be applied in any State if that application would be inconsistent with State law or practice or the order of any court respecting the public education within such age groups in the State.

The House amendments provided that a State must submit a State plan which shall assure that funds will be expended to initiate, expand,

or improve programs which are designed to assure that after September 30, 1978, no handicapped child residing in the State shall be denied appropriate special education and related services.

The House amendments provide that the requirement applies to any handicapped child who is within an age group for which free public education is provided within the State.

The House recesses.

With regard to this timetable adopted in the conference substitute conferees point out that they have provided (in 612(2)(B)) that with respect to handicapped children aged three to five and eighteen to twenty-one, inclusive, the requirements shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State.

This exception with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, is intended to exempt States from the provisions of this part establishing a timetable for providing a free appropriate public education in these age groups in the following circumstances:

(1) where State law does not authorize, or expressly prohibits, the expenditure of public funds to provide such an education to any children in these age groups;

(2) where a State does not *in fact* provide or assure the provision of free public education to handicapped children in these age groups; or

(3) where the education of handicapped children in a State is governed by a court order, the terms of which are inconsistent with the requirement contained in new section 614(2)(B). This exception shall not apply in the following circumstances:

(1) where a State does *in fact* provide or assure the provision of free public education to non-handicapped children in these age groups; or

(2) where a State does now *in fact* provide or assure the provision of free public education to handicapped children in these age groups (thus the exception being inapplicable in the case of a State which attempts to abandon the provision of such education services.)

Further, this exception is in no way to be viewed as a statement of Federal policy which discourages or otherwise serves as an obstacle for the provision of services to those handicapped children in the age groups to which this exception is applicable. To the contrary, the conferees intend the timetables established in section 612(2)(B) to be viewed as a whole, thereby specifically encouraging the States to intensify their efforts to serve all handicapped children within the time periods specified in that section.

Priorities. The Senate bill requires that the State demonstrate to the Commissioner that it has established priorities for providing a free appropriate public education which shall meet the timetables (e.g. 1978 and 1980) first, with respect to handicapped children not receiving an education, and, second, with respect to handicapped children with the most severe handicaps who are receiving an inadequate education.

The House amendments required that a local educational agency provide satisfactory assurance that payments under this part will be used for programs which establish the provision of special education and related services to handicapped children, with first priority given to the provision of such education and services to handicapped children who are not receiving such education and services, and second priority given to the provision of such education and services to handicapped children, within each disability, with severe handicaps who are not receiving adequate special education and related services.

The conference substitute conforms to the Senate bill providing that the State as a condition of eligibility must demonstrate to the Commissioner that it has established priorities for providing a free appropriate public education which shall meet the timetables established in the Act first, with respect to those handicapped children presently not receiving service at all, and second, with respect to handicapped children within each category of disability who are not receiving adequate special education and related services.

The conferees wish to make very clear that, with respect to the second priority, it is *not* intended that any one or two categories of disabilities be recognized by the Commissioner or any State or local educational agency as the "most severe" categories, but rather that an attempt must be made to reach and provide appropriate services to children with the most severe handicaps *without regard to disability category*.

Thus, it is not necessary in meeting this priority to assure the provision of appropriate services to *all* the most severely handicapped children in a particular category previous to providing such services to handicapped children in another disability category.

The conference committee did not intend to make a judgment in the legislation as to which disability is most severe. It is cognizant that disability is unique to the individual. It is aware that some multiple handicaps may not be as severe for some individuals as a single disability may be for others. The primary reason for adopting the language of the House amendments was to assure that, as cited above, no *one* disability group be considered the most severe and thus have that group exclusively receive the priority for the Act.

Requirements for individualized planning conference. The Senate bill requires that the State give assurances to the Commissioner that each local educational agency in the State will maintain records of the individualized planning conference, including the written statement developed pursuant to such conference, and that such conference shall be held at least three times each year to develop, review, and, when appropriate, and with the agreement of the parents, revise such statements. The House amendments require the local educational agency in its application to provide satisfactory assurance that it will maintain the individualized program for each child, and will review the program at least annually, and revise its provisions in consultation with the parents or guardians.

The conference substitute requires that the State give assurances as a condition of eligibility that each local educational agency will maintain records of the individualized education program for each handicapped child, and to provide assurances that each local educational agency within the State shall establish, review and revise such program

consistent with requirements on local educational agencies under the local application provisions of the Act.

The conference substitute also requires each local educational agency to provide assurances that it will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, the provisions of such program periodically, but not less than annually. In the initial year of a handicapped child's participation in a program of free appropriate public education the individualized education program shall be established at the beginning of the school year and reviewed at least once during that year. Thereafter, the Conferees intend that this provision requires at least one annual review of the child's individualized education program.

The conferees have defined the individualized education program as a written statement (including the educational status of the child, the annual goals and short-term instructional objectives, and specific educational services to be provided) for each handicapped child which is jointly developed by the local educational agency, the teacher, the parents, and the child, whenever appropriate. It is intended that *all* parties (the local educational agency, the teacher, the parents, and the child, whenever appropriated) will be involved throughout the process of establishment, review and revision of this program.

Responsibility. The Senate bill requires that the State educational agency be responsible for insuring that the provisions of part B are carried out and that all educational programs for handicapped children, including programs administered by other State or local agencies, will be under the general supervision of persons responsible for educational programs for handicapped children in the State educational agency and will meet the educational standards of the State Educational Agency. There are no comparable House provisions.

The House recedes.

Procedures for Consultation and Advice. The Senate bill requires the State to assure that procedures are established for consultation by the general public and interested parties (including handicapped individuals and parents and guardians of handicapped children), that there are public hearings (with adequate notice and an opportunity to comment) prior to adoption of policies, programs, and procedures required pursuant to the State eligibility and application provisions of this part.

There is no comparable House provision.

The House recedes.

State application provisions

Compliance Entity and Advisory Panel. The Senate bill required that a State establish an entity (at least half the members of which are handicapped individuals or parents or guardians of handicapped children) for insuring compliance with the provisions of this part which entity would (1) conduct periodic evaluations to determine whether the State educational agency and local educational agencies within the State are fully complying with the provisions of this part, (2) be empowered to receive complaints with respect to violations of this part, (3) take appropriate action to correct any violations (after notice to the State educational agency and appropriate local educa-

tional agency and providing such agencies an opportunity for a hearing), and (4) upon determination that after a reasonable period of time such violations have not been corrected, inform the Commissioner of Education who shall take action pursuant to his withholding authority under this part.

The House amendments required that the State establish an advisory panel appointed by the Governor (or other official authorized under State law to make such appointments) and composed of interested persons including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials and administrators of programs for handicapped persons. The duties of the panel are (1) to advise the State educational agency of the unmet needs in the State in the education of handicapped children, (2) to comment publicly on rules and regulations proposed by the State to implement this part and on the procedures for distribution of funds under this part, and (3) to assist the State in developing and reporting data and evaluations needed by the Commissioner.

The Senate recedes.

The Conferees emphasize that it is not their intention to require a State with an existing council or panel that is performing or can perform the functions outlined in the Conference agreement to establish another panel. An existing State advisory panel can be modified, if necessary, so that it fulfills the requirements of the Conference agreement.

Other programs. The Senate bill and the House amendments require that each State set forth the policies and procedures by which it will assure that other Federal funds for the education of handicapped children will be used in a manner consistent with this Act (including funds under title I (State operated programs) and title III of ESEA, and the Vocational Education Act).

The House amendments, but not the Senate bill, provide that the funds shall only be used in a manner consistent with the goal of providing a free appropriate public education for all handicapped children. The Senate recedes.

The Senate bill, but not the House amendments, provides that the provisions shall not be construed to limit specific requirements of laws governing such Federal programs.

The House recedes.

The Senate bill, but not the House amendments, includes local educational agency programs under title I of the Elementary and Secondary Education Act, and funds under the Rehabilitation Act of 1973 which are used for the education of handicapped children.

The Senate recedes. The conferees however strongly encourage co-operation and coordination between the state educational agency, the state rehabilitation agency and local educational agencies to assure that there is no duplication of effort and to assure that funds authorized for the education of handicapped children are spent in a way which assures the provision of a free appropriate public education for all handicapped children.

System of personnel development. The Senate bill requires that a State include in its application a description of programs and procedures it will undertake for the development and implementation of a comprehensive system of personnel development, including inservice

training of general and special education, instructional and support personnel, and detailed procedures to assure the appropriate and adequate training of all personnel necessary to carry out purposes of the part. The House amendments do not require the State educational agency to undertake the development of this system, but contain an identical provision required in the local educational agency application.

The House recedes. The Conferees note the importance of the development and implementation of a comprehensive system of personnel development since the accomplishment of the full service objective depends on the availability of skilled personnel. The Conferees also stress that inservice training must play a significant role in preparing general and special educational, instructional and support personnel for their responsibilities in educating handicapped children.

Provisions for handicapped children in private and non-public schools. Both the Senate bill and the House amendments contain a provision requiring that handicapped children placed in a private school or educational agency, by a local educational agency, shall be provided special education and related services at no cost to their parents.

The Senate bill amends existing law to replace "private" with "non-public" with respect to private school children participation. The Senate recedes.

The Senate bill provides that special education and related services will be provided in conformance with an individualized planning conference, and also includes children who are referred to private schools by a State educational agency. The House recedes.

Recovery of funds for children erroneously counted. The Senate bill required the State to seek to recover any funds distributed to a local educational agency and used for a child who was erroneously classified and counted as a handicapped child. There is no comparable House provision. The House recedes.

Nonsupplanting provisions. The Senate bill deleted a provision contained in the Education of the Handicapped Act requiring that Federal funds not supplant private funds. There was no comparable House provision. The House recedes.

The Senate bill provided a waiver with respect to nonsupplanting if the Commissioner determined that a State had provided clear and convincing evidence that all handicapped children in the State have available to them a free appropriate public education. There was no comparable House provision.

The conference substitute contains a provision requiring nonsupplanting of State and local funds, including a provision for non-commingling of Federal funds with State and local funds.

Withholding and judicial review

Both the Senate bill and the House amendments make certain changes in the withholding and judicial review section of existing law. The Senate bill is substantially the same as section 613(d)(2) of the Education of the Handicapped Act.

The House amendments amend existing law to (1) provide notice and opportunity for a hearing to the LEA under the Commissioner's withholding authority, (2) delete the word "substantially" from existing law that reads "failure to comply substantially with any such provision . . .," and (3) provide that funds may be withheld

under other Federal programs within the Commissioner's jurisdiction and control relating to the education of handicapped children. The House amendments further provide that a SEA, after appropriate notice and opportunity for hearing, shall, after a determination of a failure by the local educational agency, make no further payments to the LEA until the SEA is satisfied that the noncompliance has been corrected, and further provide that in any case where funds are withheld, the State or local educational agency involved shall bring such action to the attention of the public within the jurisdiction of such agency.

Finally, the House amendments provide for State educational agency approval of any application submitted by a local educational agency if such application meets the requirements of section 614(a), but prohibited approval before the State plan submitted by the State educational agency is approved by the Commissioner.

The Senate bill provides that wherever the compliance entity finds there has been substantial failure, it shall notify the SEA, the appropriate local educational agencies, the chief executive officers of the State, and the Commissioner (who may provide notice, conduct a hearing, and if he finds a failure, withhold payments).

The conference substitute on withholding and judicial review conforms to the House amendments, with such technical and conforming changes necessitated by other decisions of the conferees.

Local Application

The House amendments required an application to be submitted to the State educational agency by any local educational agency which desires to receive an allotment in any fiscal year, and specified conditions governing State approval of the application.

These provisions required the agency in its application to provide assurances that payments would be used to pay the excess costs directly attributable to programs for the identification, location and evaluation of handicapped children; and for the establishment of procedures to protect the confidentiality of information, for the establishment of a goal of providing full educational opportunities to all handicapped children, a detailed timetable for accomplishing such a goal and the description of facilities, personnel and services necessary to meet such a goal. As part of this goal, local educational agencies were required to establish programs and procedures for the development and implementation of a comprehensive system of personnel development, provision of special education and related services to handicapped children, with first priority given to handicapped children who are not receiving such education services, and second priority given to handicapped children, within each disability, with the most severe handicaps who are not receiving adequate special education and related services, the maintenance of special facilities for handicapped children, participation and consultation of parents or guardians, and the provision of special services to enable handicapped children to participate in regular educational programs. The provisions also required the local educational agency to provide satisfactory assurances that control and administration of funds and title would be in a public agency; that Federal funds would be used only to pay the excess costs directly attributable to the education of handicapped children; that Federal funds would supplement and increase, and in no

case supplant State local and private funds; that State and local funds would be used in the school district of the local educational agency to provide services which are at least comparable to services being provided in areas of the school district which are not receiving Federal funds under this Act; that effective procedures would be established for evaluating at least annually the effectiveness of programs for handicapped children; that an annual report and such other reports and information would be provided to the State educational agency; that records would be kept to assure the correctness and verification of information and reports to the State educational agency; that the application and all pertinent documents would be available to parents and other members of the general public; that the agency would give assurances that it has in effect a policy which assures all handicapped children the right to a free appropriate public education; that the agency would provide satisfactory assurance that it would maintain an individualized education program for each handicapped child, and would review (at least annually) and revise the provisions of this program, whenever appropriate, in consultation with the parents or guardians of the handicapped child; that policies and procedures established and administered would be consistent with the provisions of the State plan; and that the agency would establish and maintain a grievance procedure consistent with the provisions of the Act.

With regard to conditions for approval of a local application, the House amendments provided that the State educational agency could disapprove an application if it determined that the application did not meet the requirements of the part, and provided that when a State educational agency determined that a local agency (after reasonable notice and an opportunity for a hearing) had failed to comply with any requirement set forth in the application, it was required to either make no further payments to the local agency, or take such finding into account in its review of an application from the local agency for an allotment. In a case of such a determination of failure, the local educational agency was required to bring such an action to the attention of the public.

The House amendments further provided that a State educational agency may require local educational agencies to transmit a consolidated application if it determines that any individual application would be disapproved because the agency would be unable to establish and maintain programs of sufficient size and scope. In any case where a consolidated application is required, the State educational agency was required to prescribe rules and regulations to provide joint responsibilities for implementing consolidated applications, and the provisions further required that the allotment for local educational agencies submitting a consolidated application be equal to the sum of the allotments of the individual local educational agencies. The provisions provided, however, that where an intermediate educational unit or other public educational agency was required under State law to carry out provisions of this Act, that the joint responsibilities given to local educational agencies submitting a consolidated application shall not apply to the administration and disbursement of allotments received by such units or agencies.

The House amendment further provided that if a State educational agency determined that a local educational agency was unable or un-

willing to establish programs of free appropriate public education, according to the provisions of the Act or to be consolidated with other local educational agencies to establish such programs, or has one or more handicapped children who can best be served by a regional or State center, the State educational agency could use the allotment which would have been available to the local educational agency to provide special education and related services directly to handicapped children residing in the area served by the local educational agency, in such manner and at such locations as it considered appropriate (including regional or State centers) except that such education must be provided consistent with the requirements of the Act. Finally, the House amendments provided that if a State educational agency determined that a local educational agency was adequately providing special education and related services to all handicapped children in the area it served with State and local funds otherwise available to it, the State educational agency could reallocate the funds made available to such agency to other local educational agencies within the State which were not adequate providing special education and related services to all handicapped children in their areas.

There were no comparable Senate provisions.

The conference substitute conforms to the House amendments with the following noted exceptions, and with technical and conforming amendments.

With respect to the development and implementation of the comprehensive system of personnel development, the conference substitute provides that the local application shall contain procedures for the implementation and use of the system developed by the State educational agency, as required in the State plan.

The Conferees note that the local educational agency has the major responsibility in providing direct services to handicapped children; therefore, it is essential that skilled personnel be available in the local educational agency. Inservice training of general and special educational, instructional and support personnel can play a significant role in attaining the local educational agency's goal of providing a free, appropriate public education to all handicapped children.

With respect to the provision relating to expenditure of funds to pay only the excess cost of programs, the conference substitute provides that the requirement of excess cost applies only to the funds to which the local educational agency is entitled and receives under the pass-through provision. That is, the excess cost requirement applies only to those funds which shall be allotted to the local educational agency under the provision requiring 50 percent to be distributed to the local agencies in fiscal year 1978, and requiring 75 percent to be distributed to the local agencies in fiscal year 1979 and thereafter.

The conference substitute does not contain the House provision relating to the establishment of programs for the maintenance of special facilities.

With respect to the provision relating to the provision of services to handicapped children to enable such children to participate in regular educational programs, the language is amended to conform the provision to provisions of existing law relating to removal of children from the regular educational program.

With respect to the non-supplanting provision, private funds are deleted.

The conference substitute does not contain the House provision relating to evaluation.

With respect to the provision requiring an annual report and such other reports and information as the State educational agencies may require, the specific requirement of an annual report is deleted. The conferees expect that the annual local application can serve adequately for purposes of annual reporting to the State agency, and that such other information as may be required by the State can be required and collected, consistent with this provision, as is needed.

With respect to the provisions requiring assurances that the local educational agency have in effect a policy which assures that all handicapped children have the right to a free appropriate public education, the House recedes. The conferees point out that a comparable provision from the Senate bill was adopted which required the State to have a right to education policy in effect as a condition of State eligibility. Thus, because each local educational agency is a legal arm of the State, each such agency will have to assure the right to education for all handicapped children as a matter of State law or practice and such an assurance in the local application is unnecessary.

With respect to the provision allowing the State educational agency, under specified conditions to use the local educational agency allotment to serve handicapped children directly in such manner and at such location (including State and regional centers) consistent with the provisions of the Act, conferees specifically point out that serving children in State or regional centers must be done consistent with provisions of existing law which require that to the maximum extent appropriate, handicapped children are educated with non-handicapped children, and special classes, separate schooling, or other removal from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

With respect to the provision providing that the State educational agency may reallocate funds if it determines that the local educational agency is adequately providing special education and related services to all handicapped children within its jurisdiction, the conference substitute provides that the local educational agency must be adequately providing a free appropriate public education to all handicapped children residing in its jurisdiction. The conferees note that section 425 of the General Education Provisions Act, which provides an opportunity for a hearing with the State educational agency and an appeal to the Commissioner in cases where a local educational agency is aggrieved by an action of the State educational agency, applies to this reallocation provision.

In addition, the conference substitute provides that where the State directly provides special education and related services to handicapped children or provides funds to a local educational agency which agency does not submit a local application, all provisions (except those relating to excess cost) which would have applied to the local educational agency apply to the State educational agency and the State agency must include the applicable assurances in its State plan.

Certain local educational agency entitlements

The House amendments, but not the Senate bill, provide that any local educational agency which is required to carry out a program for

the education of handicapped children pursuant to State law enacted previous to the date of enactment of this Act shall be entitled to receive an allotment under this Act, whether or not funds have been provided to fully implement such state law. However, the local educational agency may not use its allotment to reduce its expenditures below its expenditures in the previous fiscal year.

The Senate recedes with amendments to delete private funds from the nonsupplanting language, to also apply the provision to States which enact laws after the date of enactment of this Act, and to clarify that any local educational agency must still meet the other requirements of the Act. The Conferees wish to clarify that State and local educational agencies in States which have passed laws requiring services required under this Act are eligible for funding, and that such States may use such funds as long as they are used to carry out the provisions of this Act (even if they are identical to State law) and as long as such funds do not reduce the level of expenditures made by State or local educational agencies in the previous fiscal year.

Incentive grants

The Senate bill provides that the Commissioner shall make grants to any State which meets the eligibility requirements under the Act and provides special education and related services to handicapped children, aged 3-5, inclusive, who are counted under the formula in section 613, in the amount of \$300 for each such child.

An application is required and funds received shall be used for providing educational and related services for handicapped children aged 3-5.

Such sums as may be necessary to carry out the provision in the Senate bill are authorized.

The House amendments do not contain a comparable provision.

The House recedes with two amendments, clarifying that the maximum amount of the grant which a State receives under the section shall be not more than \$300 for each handicapped child eligible under the section, and adding a provision for pro-rata reduction if funds appropriated under the section are not sufficient for full funding of the maximum amount of \$300 per such handicapped child.

Payments for administration and planning

The Senate bill authorizes such sums as may be necessary in addition to the amounts to which States are entitled under section 612 for the purposes of administration and planning and specifically includes regional, interstate, and intrastate technical assistance, and dissemination of necessary materials. Limitation is placed on the amount of payment at 5% of the amounts paid under section 612, or \$200,000 whichever is greater for States; and 5% or \$60,000, whichever is greater for Guam, American Samoa, Virgin Islands, or the Trust Territory of the Pacific Islands. Existing law, which the House amendments do not amend, provides that this amount shall come out of the amount to which States are entitled under section 612 and provides 5% or \$200,000 for States, and 5% or \$35,000 for the territories.

The Senate recedes with an amendment to assure that the limitation for administration of 5% or \$200,000, whichever is greater, for States, and 5% or \$35,000, whichever is greater, for the territories, is retained in the conference substitute.

Due Process Procedures

The Senate bill re-enacts the provisions of existing law relating to procedural safeguards for handicapped children and parents and guardians of handicapped children, requires their establishment as a condition of State eligibility under this part and makes the following changes to these provisions:

(1) parents or guardians will be provided prior notice when the State or local educational agency proposes to *initiate* the educational placement of the child;

(2) the impartial due process hearing will not be conducted by an employee of the State or local educational agency directly involved in the education or care of the child; and

(3) materials and procedures shall be provided and administered in the child's primary home language or mode of communication and that no single procedure shall be the sole criterion for determining an appropriate educational placement for a child.

The House bill retains the provisions of existing law relating to procedural safeguards as part of the State plan and adds the following:

(1) Any local educational agency receiving assistance under this part shall establish a grievance procedure that will offer an opportunity for handicapped children and their parents or guardian to present complaints with respect to the manner in which the handicapped child involved is receiving special education and related services;

(2) Upon receipt of a complaint, the local educational agency shall conduct an investigation, and upon completion of such investigation, transmit a report (including a description of any recommendation or disposition made) to the State educational agency;

(3) The State educational agency, upon appeal by an aggrieved party or on its own motion shall review the action of the local agency and conduct an investigation of the factual circumstances relating to the complaint, attempt to resolve the matter (by informal methods), and, upon a finding (after reasonable notice and opportunity for a hearing) that a local educational agency has failed to comply with any provision of this part, shall take whatever steps necessary to correct such failure;

(4) Any person participating in a hearing conducted by a local educational agency and the State educational agency shall have the right to be accompanied and advised by counsel and by individuals with special knowledge or training and skills with respect to handicapped children;

(5) The State educational agency shall take its findings and determinations into account during its review of any application for funds under this part made by the local educational agency involved and shall submit a report of its findings and determinations (and a description of any action taken thereon) regarding any complaint to the Commissioner of Education; and

(6) Actions may be brought in the district courts of the United States to appeal the determinations of the State educational agency and in such actions the findings of fact of the State educational agency shall be conclusive if supported by substantial evi-

dence and the district courts may remand the case to the State agency to take additional evidence.

The following conference substitute is adopted in order to clarify and strengthen the procedural safeguards in existing law.

(1) All of the procedural safeguards are established as a condition of a State's eligibility to receive funds under this part;

(2) The provisions of existing law are retained with respect to the establishment of procedures to insure that handicapped children are educated with children who are not handicapped;

(3) The provisions of existing law are retained with respect to the establishment of procedures to insure non-discriminatory testing and evaluation procedures and language is added (from the Senate bill) which provides that materials and procedures shall be provided and administered in the child's native language or mode of communication (unless it is clearly not feasible to do so) and that no single procedure shall be the sole criterion for determining an appropriate educational placement for a child;

(4) The provisions of existing law are retained with respect to the establishment of procedures providing parents or guardians the opportunity to examine all relevant records with respect to the identification, evaluation, and educational placement of the child and language is adopted to clarify that the parents or guardian shall be able to examine any records relating to the provision of a free appropriate public education (as that term is defined in the Act) to the child. The provisions of existing law with respect to an opportunity for an independent educational evaluation of the child are also retained;

(5) The provisions of existing law are retained with respect to the establishment of procedures to protect the rights of the child when the parents are unknown, unavailable, or the child is a ward of the State, including the appointment of a surrogate for the parents or guardian;

(6) The provisions of existing law are retained with respect to requiring prior notice to the parents or guardian. Language is adopted to clarify that such notice shall be in writing. Such notice shall be provided to the parent or guardian whenever the local educational agency or the State educational agency (when the State agency acts as a provider of direct educational services to the child) *proposes* to initiate or make a change in the identification, evaluation, or educational placement of the child or to *initiate* or change the free appropriate public education (as that term is defined in the Act) provided or available to such child, or *refuses* to undertake such action (such as the denial of special education and related services to a child). In addition, language is adopted to assure that any such notice shall, to the maximum extent feasible, be in the parents' or guardian's native language (as that term is defined in title VII of the Elementary and Secondary Education Act of 1965) and shall include a full explanation of the procedural safeguards available to the parents or guardian under the Act;

(7) The provisions of existing law are clarified and strengthened with respect to impartial due process hearings and language is adopted to assure that:

(a) any parent or guardian may present a complaint concerning *any matter* regarding the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to such child.

(b) whenever a complaint is received the parents or guardian shall be afforded an opportunity for an impartial due process hearing, which hearing shall be conducted by the local educational agency or the State educational agency. The conferees do not intend that this provision will require changes in existing arrangements where due process hearings are conducted at the level of the State educational agency rather than at the local level. The only requirement with respect to the level of which such hearings are conducted occurs when the hearing is conducted at the local level and in such cases there is a review required at the State agency level. In addition, the conferees point out that any hearings are not conducted by the agency itself, but rather at the appropriate agency level. The hearing will be conducted by an impartial hearing officer since the State or local agency or intermediate unit will be a party to any complaint presented.

(c) no hearing may be conducted by an employee of the State or local educational agency involved in the education or care of the child. The conferees have adopted this language to clarify the minimum standard of impartiality which shall apply to individuals conducting due process hearings and individuals conducting a review of the local due process hearing;

(d) in the event that the impartial due process hearing is conducted by a local educational agency, any party to such hearing who is aggrieved by the findings and decision rendered in such hearing may appeal to the State educational agency and the State agency shall conduct an impartial review of the hearing and the individual conducting this review shall make an independent decision. The conferees expect that where due process hearings are conducted by the State educational agency or in cases where a review of local educational agency hearings is made by the State educational agency, such proceedings will be conducted at a time and place which is reasonably convenient to the parents or guardian of the child involved.

(e) any party to any hearing conducted by the State or local educational agency and any party to any hearing conducted by the State educational agency as part of an impartial review of a hearing conducted by a local educational agency in that State shall be accorded (1) the right to counsel and to be advised and accompanied by individuals with special knowledge, training or skills with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel attendance of witnesses, (3) the right to have a written or electronic verbatim record of such hearing, and (4) the right to have written findings of fact and decisions. The conferees adopt

this language to reinforce rights already required by the Commissioner of Education pursuant to existing law. Further, it should be emphasized that these rights shall also apply in State reviews of local agency hearings where the reviewing officer determines that a hearing should be conducted for purposes of taking new or additional evidence.

(8) The provisions of existing law with respect to the binding effect of due process hearings and appropriate administrative and judicial review of such hearings are clarified and language is also adopted to require that during the pendency of any administrative or judicial proceedings regarding a complaint, unless the State or local educational agency and the parents or guardian of the child otherwise agree, the child involved in the complaint shall remain in his or her present educational placement, or, if the complaint involves an application for initial admission to public school the child shall, with the consent of the parents or guardian be placed in the public school program until the completion of all such proceedings.

(9) The provisions of existing law with respect to judicial action are clarified and strengthened to assure that any party aggrieved by the findings and decision rendered in the due process hearing or the State educational agency review of such hearing shall have the right to bring a civil action with respect to the original complaint and matters relating thereto. Such action may be brought in any State court of competent jurisdiction or in a district court of the United States and in any such action the court shall receive the records of the due process hearing (and where appropriate the records of the review of such hearing), shall hear additional evidence at the request of any party, shall make an independent decision based on a preponderance of the evidence and shall grant all appropriate relief. A technical clarification is also made assuring that the district courts of the United States have jurisdiction of actions brought pursuant to these provisions without regard to the amount in controversy.

Administration

Both the Senate bill and the House amendments contain provisions relating to the Commissioner's duties with respect to administration.

Certification of Number of Children. The Senate bill requires the Commissioner to insure that each State, within one year from date of enactment, provide certification of the actual number of handicapped children receiving special education and related services. The House amendments contain no comparable provision.

The House recedes.

Uniform Financial Report. The Senate bill provides that the Commissioner shall by regulation prescribe a uniform financial report to be used by State agencies in submitting an application for assistance as soon as practicable after the date of enactment. The House amendments specify uniform categories and accounting procedures to be used by SEA's in submitting State plans in order to assure equity among the States.

The House recedes.

Rules and Regulations. The Senate bill requires the Commissioner to issue, amend and revoke such rules and regulations as may be necessary in carrying out the provisions of the Act and does not authorize any other informal method. The House amendments require the Commissioner to prescribe and publish in the Federal Register such rules as he considers necessary to carry out the provisions.

The House recedes.

Confidentiality. The Senate bill, but not the House amendments, requires the Commissioner to take appropriate action to assure the protection of confidentiality of a personally identifiable data, information, or records collected or maintained by him and by State educational agencies and local educational agencies under the Act.

The House recedes with an amendment requiring that the Secretary of the Department of Health, Education, and Welfare take appropriate action to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to the provisions of this part, in accordance with the provisions of section 438 of the General Education Provisions Act relating to protection of confidentiality.

Task Force. The Senate bill, but not the House amendments, requires the Secretary to establish a task force to develop guidelines to assure all programs administered by HEW which provide assistance for the education of handicapped children are administered in a manner consistent with the Act and directs the Secretary to be responsible for the guidelines and to assure the cooperation in the implementation of the guidelines by HEW agencies.

The Senate recedes.

Authorization. The Senate bill, but not the House amendments, authorizes such sums (not to exceed one-fourth of one percent of the amounts appropriated under section 612, or \$1 million, whichever is greater) for administration.

The Senate recedes.

Evaluation

Studies, Investigations, and Evaluations. Both the Senate bill and House amendments require the Commissioner to conduct, directly or by grant or contract, such studies, investigations, and evaluations as are necessary to assure effective implementation of this program and to provide for the evaluation of such program through the development of effective methods and procedures for evaluation and the conducting of actual evaluation studies designed to test the effectiveness of activities supported by financial assistance under the Act.

The Senate bill, but not the House amendments, authorizes the Commissioner to validate evaluation methods and procedures. The House recedes.

The Senate bill provides that the Commissioner shall provide for the collection and annual reporting of programmatic information; the House amendments provide that the Commissioner, through the National Center for Education Statistics, shall provide similar information to Congress and the general public at least annually, and shall update such information at least annually. The Senate recedes.

Both the Senate bill and the House amendments require the Commissioner to obtain information on the number of handicapped chil-

dren in each State who need special education and related services, the amount of Federal, State and local expenditures in each of the States for special education, and the number of handicapped children receiving special educational services. The House amendments also permit sampling of data and require that the Commissioner obtain information on the number of handicapped children not receiving a free appropriate public education. The conference substitute combines the House and Senate provisions.

The Senate bill, but not the House amendments, requires that the Commissioner collect information concerning the types of handicaps and the numbers of children with such handicaps who are participating in programs supported by this Act. The House recedes.

The House amendments, but not the Senate bill, require the Commissioner to gather information concerning the number of children in regular classroom settings, separate classrooms, or separate schools, or who have been otherwise removed from the regular education environment; require the Commissioner to obtain information on the number of children in public or private institutional settings who are receiving a free appropriate public education and those who are not receiving such an education; and require the Commissioner to obtain information on the number of personnel, by disability category, who are employed in the education of handicapped children and the estimated number of additional personnel needed. The Senate recedes.

Report to the Congress on Activities and Progress. The Senate bill requires the Commissioner, within 120 days after the close of each fiscal year, to submit to the appropriate committees of the Congress a full and complete report on the activities carried out under the Act. The report is to include an analysis and assessment of the progress being made toward the provision of special education, an evaluation of procedures undertaken by the States to assure that children are receiving an education in the least restrictive environment, and an evaluation of the effectiveness of procedures undertaken by the States to prevent erroneous classification of children.

The House amendments require that the Commissioner, within 120 days after the close of each fiscal year, transmit to the Congress a report on progress being made toward the provision of a free appropriate public education, including detailed descriptions of evaluation activities and an analysis and evaluation of the effectiveness of procedures undertaken to assure education in the least restrictive environment and to improve programs in day or residential facilities. In order to carry out such analysis, the Commissioner may conduct a survey for assessing the effectiveness of the individualized educational programs.

The conference substitute combines the Senate and the House provisions; the conferees also amended the House language relating to the survey on the effectiveness of the individualized educational programs to require such a survey.

Study of Objective Criteria and Evaluation Procedures. The Senate bill directs the Commissioner to submit to the Congress by June 30, 1977, a comprehensive study of objective criteria and evaluation procedures to determine the effectiveness of special education and related services. There is no comparable House provision.

The Senate recedes.

Survey of the Effectiveness of Conferences and Plans. The Senate bill directs the Commissioner to submit to the Congress by December 1, 1977, a survey of the effectiveness of the individualized planning conference.

The Senate recedes although it should be noted that the conference substitute relating to reports to the Congress requires that the Commissioner conduct a survey for assessing the effectiveness of the individualized educational programs in order to carry out the analysis and evaluation required by that provision.

Personnel. The Senate bill, but not the House amendments, provide that the personnel the Commissioner is authorized to hire may carry out his duties under administration.

The House recedes.

Authorization. The Senate bill, but not the House amendments, authorizes appropriations for evaluation activities, providing \$2,500,000 for fiscal year 1976, \$3,500,000 for fiscal year 1977, \$5,000,000 for fiscal year 1976 and \$7,500,000 for fiscal year 1979.

The House recedes with an amendment of "such sums as may be necessary" rather than the authorization levels specified in the Senate bill. The Conferees estimate that expenditures for these purposes will require appropriations as follows: \$2,000,000 for fiscal year 1976, \$3,000,000 for fiscal year 1977, \$5,000,000 for fiscal year 1978 and \$7,000,000 for fiscal year 1979 if the Commissioner is to be able to fully meet his responsibilities in carrying out these provisions.

Rules

The House provisions with respect to rules and regulations require promulgation not later than 120 days after September 30, 1977. The Senate provisions with respect to rules and regulations (section 618(b) of the Education of the Handicapped Act as amended by the Senate bill) require promulgation no later than July 1, 1976.

The conference substitute conforms to the House amendments, but the date, September 30, 1977, has been changed to January 1, 1977.

Centers on Education Media and Materials for the Handicapped

The House amendments, but not the Senate bill, amend section 653 of the Education of the Handicapped Act to authorize the Secretary to enter into agreements with institutions of higher education, State and local educational agencies, or other non-profit agencies for the establishment and operation of centers on educational media and materials for the handicapped. Existing law authorizes a single national center. This House provision also deletes the language which provides a preference to institutions which can serve the educational technology needs of the Model High School for the Deaf.

The Senate recedes with an amendment that the Secretary shall give preference to those which can serve the educational technology needs of the Model Secondary School for the Deaf.

Employment of Handicapped Individuals

The Senate bill provides that the Secretary, as a condition of providing assistance under this Act, shall insure that each recipient of funds shall take affirmative action to employ and advance in employment qualified handicapped individuals on the same terms and conditions as set forth in the provisions of the Rehabilitation Act of 1973

relating to employment of handicapped individuals by State rehabilitation agencies and rehabilitation facilities and under Federal contracts and subcontracts.

There is no comparable House provision.

The House recedes with an amendment. As amended, the provision requires the Secretary to insure that each recipient of financial assistance under the Education of the Handicapped Act is taking such positive efforts to employ and advance in employment qualified handicapped individuals. The conferees deleted the language in the Senate bill making financial assistance conditional upon such Secretarial assurances because section 504 of the Rehabilitation Act of 1973 already establishes, as a matter of federal law, that no qualified handicapped individual in the United States shall be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial assistance. It is clear that qualified handicapped individuals who, because of their handicap, are refused employment by recipients of assistance under the Act are fully covered by the prohibition in section 504 of the Rehabilitation Act of 1973. The conferees expect that the Department of Health, Education and Welfare regulations implementing section 504 will cover employees of such recipients of Federal assistance under this Act. The language of the amendment is designed to underscore the responsibility of the Secretary to pursue vigorously the enforcement of section 504 especially as it relates to the employment of administrators and teachers in programs for the education of handicapped children.

Architectural Barriers Removal

Both the Senate bill and the House amendments authorize such sums as may be necessary for grants to State and local educational agencies for the removal of architectural barriers. The House amendments, but not the Senate bill, provide a definition of State educational agency and local educational agency, defining these terms as defined by the Education of the Handicapped Act.

The House recedes.

Congressional Disapproval of Regulations

The House amendments make changes in section 431 of the General Educational Provisions Act relating to congressional disapproval of regulations. These amendments provide that failure of the Congress to adopt a concurrent resolution disapproving any standard, rule, regulation, or requirement shall not represent an approval or finding of consistency, and shall not be construed as evidence of approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption in any judicial proceeding. The House amendments also clarify that there shall be 45 days following the transmittal of the final regulations for congressional consideration and possible disapproval. There is no comparable Senate provision.

The Senate recedes with an amendment which applies the forty-five day period for congressional consideration and disapproval only to final regulations.

Effective date provisions

The conference report contains technical and conforming changes in the effective date provisions of the bill to reflect the decisions made by the Conferees.

Title

The title of the House amendments, but not the title of the Senate bill, indicates that the Education of the Handicapped Act is being amended. The title of the Senate bill, but not the title of the House amendments, indicates that the legislation provides financial assistance to States to insure the right of an education for all handicapped children.

The conference substitute conforms to the House amendments.

JENNINGS RANDOLPH,
ALAN CRANSTON,
HARRISON WILLIAMS,
CLAIBORNE PELL,
EDWARD M. KENNEDY,
WALTER F. MONDALE,
WILLIAM D. HATHAWAY,
ROBERT T. STAFFORD,
ROBERT TAFT, Jr.,
DICK SCHWEIKER,
J. GLENN BEALL, Jr.,
J. JAVITS,

Managers on the Part of the Senate.

CARL D. PERKINS,
JOHN BRADEMAS,
PATSY T. MINK,
LLOYD MEEDS,
SHIRLEY CHISHOLM,
WILLIAM LEHMAN,
ROBERT J. CORNELL,
EDWARD P. BEARD,
LEO C. ZEFERETTI,
GEORGE MILLER,
TIM L. HALL,
ALBERT H. QUIE,
ALPHONZO BELL,
PETER A. PEYSER,
JAMES M. JEFFORDS,
LARRY PRESSLER,

Managers on the Part of the House.

○